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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,087	02/27/2004	Paul M. Dantzic	YOR920030580US1	7520
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William E. Lewis RYAN, MASON & LEWIS, LLP 90 Forest Avenue Locust Valley, NY 11560				
EXAMINER				
HU, JINSONG				
ART UNIT		PAPER NUMBER		
2454				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/789,087

Applicant(s)

DANTZIG ET AL.

Examiner

JINSONG HU

Art Unit

2454

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8,11,12,14-16,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,11,12,14-16,20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-2, 4-8, 11-12, 14-16 and 20-21 are presented for examination. Claims 3, 9-10, 13 and 17-19 have been canceled. Claims 1, 11, 16 and 20 have been amended. Claim 21 is newly added claim.

Election/Restrictions

2. Newly submitted claim 21 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

I. Claims 1-2, 4-8, 11-12, 14-16 and 20, drawn to a system and method for providing service to user based upon user's preference, classified in class 709, subclass 203.

II. Claim 21, drawn to a system and method for distributing service in a load balance management network, classified in class 709, subclass 235.

3. The inventions are distinct, each from the other because of the following reasons: Inventions I and II are disclosed as different combinations which are not connected in design, operation or effect. These combinations are independent if it can be shown that (1) they are not disclosed as capable of use together, (2) they have different modes of

operation, (3) they have different functions, or (4) they have different effects. (MPEP 806.04, MPEP 808.01).

In the instant case, invention I is directed to a method comprises the steps of determining a level of personalization associated with the content to be delivered to the client in response to the request. The invention II is directed to a method comprises the steps of determining a load on a next level computing device of the hierarchy when the current load on the next-level computing device of the hierarchy is such that a response time for delivery of the request from the next-level computing device would increase above a given threshold, checking a client type associated with the request and, when the client type indicates that the client is below a given priority level, personalizing content to be delivered to the client in response to the request at the receiving computing device.

4. These inventions are distinct for the reasons given above, and the search required for each Group is different and not co-extensive for examination purpose. For example, the searches for the four inventions would not be co-extensive because these groups would require different searches on PTO's classification class and subclass as following:

(a) the Group I search (claims 1-2, 4-8, 11-12, 14-16 and 20) would require use of search **Class 709, subclass 203**.

(b) the Group II search (claim 21) would require use of search **Class 709, subclass 235**.

5. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 21 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

6. Applicant have amended claim 16 to remove 101 rejection, the limitations in claim 16 satisfy 101 requirement. However, based on MPEP requirement, all limitations listed in the claims should be supported by the specification. Applicant is required to amend the specification to support the "computer readable storage medium" as well as avoiding using any non-statutory subject matter within the definition.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-2, 4-8, 11-12, 14-16 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Schneider (US 2001/0037402).

9. As per claims 1-2 and 5, Schneider teaches the invention as claimed including a method of delivering content in a client-server system based on a request from a client [abstract], comprising the steps of:

obtaining the request [par. 20, lines 1-3];

determining a performance characteristic of at least one server or at least one cache of the client-server system [pars. 16, 20 & 29]; and

determining a level of personalization to be delivered to the client in response to the request including whether the content is personalized for the content at the at least one server or the at least one cache [i.e., user select transmission method or level based on their preference], the determination being based on: (i) the determined performance characteristic of the at least one server or the at least one cache; and (ii) at least one preference associated with the client [pars. 16, 18, 20, 23, 25 & 27-28].

10. As per claim 4, Schneider teaches the determination of a level of data accuracy on at least one personalization preference [pars. 17, 25 & 27-28].

11. As per claims 6-8, Schneider teaches the step of delivering content in a client-server system comprises delivering one or more Web pages [inherent, pars. 4 & 8, the content delivered from server could be web page].

12. As per claims 11-12 and 14-15, since they are apparatus claims of 1-2, 5 and 7, they are rejected for the same basis as claims 1-2, 5 and 7 above.

13. As per claims 16 and 20, since they are manufacture and system claims of claim 1, they are rejected for the same basis as claim 1 above.

Conclusion

14. Applicant's arguments with respect to newly added limitation have been considered but are not persuasive.

15. In the remarks, applicant argued in substance that Schneider does not teach determining a level of personalization to be delivered to the client in response to the request including whether the content is personalized for the content at the at least one server or the at least one cache.

16. Examiner respectfully traverses applicant's remarks:

As applicant admitted in the remarks, Schneider teaches the step of allowing user to select transmission method or level based on their preference [pars. 16, 18, 20, 23, 25 & 27-28]. Once the user selected the preferred transmission level for requested content, it means the requested content has been personalized on the server or cache for the particular user. Thus, Schneider does teach the newly added limitation.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jinsong Hu whose telephone number is (571) 272-3965.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jinsong Hu/

Primary Examiner, Art Unit 2154